

1 RAMIRO MORALES, SBN 167947
rmorales@mfrlegal.com
2 WILLIAM C. REEVES, SBN 183878
wreeves@mfrlegal.com
3 LAURENCE NEAR, SBN 178507
lnear@mfrlegal.com
4 MORALES FIERRO & REEVES
1440 Maria Ln, Ste. 200
5 Walnut Creek, CA 94596
6 Telephone: (925) 288-1776
7 Facsimile: (925) 288-1856
8

9 Attorneys for Plaintiffs
10 THE PHOENIX INSURANCE COMPANY
and TRAVELERS PROPERTY CASUALTY
11 COMPANY OF AMERICA
12

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
15

16 THE PHOENIX INSURANCE
COMPANY, TRAVELERS
17 PROPERTY CASUALTY COMPANY
OF AMERICA,

18 Plaintiffs,

19 v.

20 NORTHWEST PIPE COMPANY,

21 Defendant.
22

CASE NO.:

**COMPLAINT FOR
DECLARATORY RELIEF**

23 COMES NOW, Plaintiff The Phoenix Insurance Company and Plaintiff
24 Travelers Property Casualty Company of America, and, by way of this Complaint
25 against Defendant Northwest Pipe Company (“Defendant” or “Northwest Pipe
26 Company”), allege as follows:

27 1. At all times relevant herein, Plaintiff The Phoenix Insurance Company
28 was and is a corporation organized and existing under the laws of the State of

1 Connecticut with its principal place of business in Connecticut.

2 2. At all times relevant herein, Plaintiff Travelers Property Casualty
3 Company of America was and is a corporation organized and existing under the laws
4 of the State of Connecticut with its principal place of business in Connecticut.

5 3. Plaintiff The Phoenix Insurance Company and Plaintiff Travelers
6 Property Casualty Company of America are referred to herein collectively as
7 “Travelers” or as “Plaintiffs.”

8 4. Plaintiffs are informed and believe and on that basis alleges that
9 Northwest Pipe Company is, and at all times herein mentioned was, an Oregon
10 corporation, with its principal place of business in Washington and authorized to do
11 business in the State of California. Defendant has manufacturing facilities throughout
12 the United States, including a plant located at 12351 Rancho Road, Adelanto,
13 California, 92301.

14 5. The jurisdiction of this Court over the subject matter of this action is
15 predicated on 28 USC Section 1332. The amount in controversy exceeds \$75,000.00,
16 exclusive of interests and costs, and the dispute is between citizens of different states.

17 6. Venue is predicated on 28 USC Section 1391(b)(2). A substantial part
18 of the events or omissions giving rise to the underlying lawsuit occurred, or a
19 substantial part of property that is the subject of the underlying action is situated in,
20 the County of San Luis Obispo, which falls within this district, as alleged below.

21 **I. THE TRAVELERS POLICIES**

22 7. Plaintiff The Phoenix Insurance Company issued policy number Y-660-
23 226D0451-PHX-08 to Northwest Pipe Company, with a policy period of November
24 1, 2008 to November 1, 2009.

25 8. Plaintiff Travelers Property Casualty Company of America issued policy
26 number Y-660-22D0451-TIL-09 to Northwest Pipe Company, with a policy period of
27 November 1, 2009 to November 1, 2010.

1 9. Plaintiff Travelers Property Casualty Company of America issued policy
2 number Y-660-226D0451-TIL-10 to Northwest Pipe Company, with a policy period
3 of November 1, 2010 to November 1, 2011.

4 10. Plaintiff Travelers Property Casualty Company of America issued
5 policy number Y-660-226D0451-TIL-11 to Northwest Pipe Company, with a policy
6 period of November 1, 2011 to November 1, 2012.

7 11. Plaintiff Travelers Property Casualty Company of America issued policy
8 number Y-660-226D0451-TIL-12 to Northwest Pipe Company, with a policy period
9 of November 1, 2012 to November 1, 2013.

10 12. Plaintiff Travelers Property Casualty Company of America issued policy
11 number Y-660-226D0451-TIL-13 to Northwest Pipe Company, with a policy period
12 of November 1, 2013 to November 1, 2014.

13 13. Plaintiff Travelers Property Casualty Company of America issued policy
14 number Y-660-226D0451-TIL-14 to Northwest Pipe Company, with a policy period
15 of November 1, 2014 to November 1, 2015.

16 14. Plaintiff The Phoenix Insurance Company issued policy number Y-660-
17 226D0451-PHX-15 to Northwest Pipe Company, with a policy period of November
18 1, 2015, to November 1, 2016.

19 15. The policies referenced in paragraphs 7 through 15 above are referred to
20 herein collectively the “Travelers Policies.”

21 16. The Insuring Agreement under the Commercial General Liability
22 Coverage Form in the Travelers Policies states:

23 **1. Insuring Agreement**

- 24 a. We will pay those sums that the insured becomes legally obligated
25 to pay as damages because of “bodily injury” or “property
26 damage” to which this insurance applies. We will have the right
27 and duty to defend the insured against any “suit” seeking those
28 damages. However, we will have no duty to defend the insured
against any “suit” seeking damages for “bodily injury” or

“property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result.

...

b. This insurance applies to “bodily injury” or “property damage” only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period.

...

17. The Travelers Policies define “property damage” as:

“Property damage” means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it.

18. The Travelers Policies define “suit” as:

“Suit” means a civil proceeding in which damages because of “bodily injury”, “property damage” or “personal and advertising injury” to which this insurance applies are alleged. “Suit” includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

1 19. The Travelers Policies contain limitations of coverage, including but not
2 limited to the Your Product Exclusion, which is identified as Exclusion “k” in the
3 policy; Your Work Exclusion, which is identified as Exclusion “l” in the policy; and
4 the Impaired Property Exclusion, which is identified as Exclusion “m” in the policy.

5 20. The Travelers Policies contains the following conditions: “No insured
6 will, except at that insured’s own cost, voluntarily make a payment, assume any
7 obligation, or incur any expense, other than for first aid, without our consent.”

8 **II. THE UNDERLYING LAWSUIT**

9 21. On May 19, 2020, the San Luis Obispo County Flood Control and Water
10 Conservation District (hereinafter “SLO”) filed suit against A. Teichert & Son, Inc.,
11 dba Teichert Construction in the Superior Court of the State of California, County of
12 San Luis Obispo, Case No. 20CV-0264. Northwest Pipe was not named as a
13 defendant by SLO in its complaint.

14 22. The complaint in the underlying lawsuit alleges that SLO and Teichert
15 entered into a contract for construction of pipeline for the Nacimiento Water Project,
16 which, on information and belief, is located in San Luis Obispo County.

17 23. The complaint in the underlying lawsuit alleges “Defendants agreed to
18 procure, handle, inspect and install certain pipelines and related appurtenances” for
19 SLO. The complaint further alleged that on or about September 11, 2019, SLO
20 became aware of leakage on the ground surface above the pipeline occurring on the
21 east side of the Salinas River pipeline crossing and notified Teichert of the leak. The
22 complaint alleged causes of action for breach of contract, negligence, and breach of
23 express warranty.

24 24. On or about August 12, 2020, Teichert filed a cross-complaint in the
25 underlying lawsuit. The cross-complaint names Northwest Pipe Company as a cross-
26 defendant.

27 25. The cross-complaint in the underlying lawsuit alleges that on June 23,
28 2008, Teichert and Northwest Pipe Company entered into a purchase order whereby

1 Northwest Pipe Company agreed to supply certain pipe and other related materials to
 2 the project. Teichert alleges if SLO prevails on its claims, Northwest Pipe Company
 3 will have breached its duty of care by manufacturing and supplying defective and/or
 4 deficient material to the project.

5 26. On November 12, 2020, the court in the underlying action transferred the
 6 case to the Santa Clara County Superior Court in response to a motion to transfer
 7 venue by Teichert, wherein Teichert argued that the action was brought by a local
 8 government agency situated in San Luis Obispo County against a corporation doing
 9 business in another county, and hence that the action needed to be transferred to a
 10 neutral venue. The new case number is 21CV380615.

11 27. Plaintiffs agreed to defend, and are currently defending, Northwest Pipe
 12 Company against the cross-action in the underlying lawsuit, under a full reservation
 13 of rights.

14 **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

15 **DUTY TO DEFEND**

16 28. Plaintiffs hereby re-allege and incorporate by reference all of the
 17 allegations contained in all preceding paragraphs of this Complaint as though fully set
 18 forth herein.

19 29. An actual, present, and justiciable controversy has arisen and now exists
 20 between Plaintiffs, on the one hand, and Defendant, on the other, concerning
 21 Plaintiffs' rights, duties, and obligations under the Travelers Policies.

22 30. Plaintiffs contend that they owe no duty to defend Defendant under the
 23 Travelers Policies against claims made against Defendant in the underlying lawsuit.

24 31. On information and belief, Defendant disputes Plaintiffs' position and
 25 contends that Plaintiffs have an obligation to defend Defendant in the underlying
 26 lawsuit.

27 32. Accordingly, an actual controversy presently exists between Plaintiffs
 28 and Defendant regarding whether Plaintiffs have a duty to defend Defendant in the

1 underlying lawsuit.

2 33. Plaintiffs have no adequate remedy at law to resolve this dispute.
3 Plaintiffs seek a judicial resolution of the controversy and a declaration of the
4 following: that Plaintiffs owe no duty to defend Defendant in the underlying lawsuit
5 under the Travelers Policies.

6 34. By reason of the foregoing, a declaratory judgment is both proper and
7 necessary so that the rights, duties, and obligations between Plaintiffs and Defendant
8 may be determined under the provisions of the Travelers Policies.

9 **SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF**

10 **DUTY TO INDEMNIFY**

11 35. Plaintiffs hereby re-allege and incorporate by reference all of the
12 allegations contained in all preceding paragraphs of this Complaint as though fully set
13 forth herein.

14 36. An actual, present, and justiciable controversy has arisen and now exists
15 between Plaintiffs on the one hand, and Defendant on the other, concerning Plaintiffs'
16 rights, duties, and obligations under the Travelers Policies.

17 37. Plaintiffs contend that they owe no duty to indemnify Defendant under
18 the Travelers Policies against damages sought from Defendant in the underlying
19 lawsuit.

20 38. On information and belief, Defendant disputes Plaintiffs' position and
21 contends that Plaintiffs have an obligation to indemnify Defendant under the
22 Travelers Policies against damages sought from Defendant in the underlying lawsuit.

23 39. Accordingly, an actual controversy presently exists between Plaintiffs
24 and Defendant regarding whether Defendant has a duty to indemnify Defendant
25 against damages sought from Defendant in the Underlying Action.

26 40. Plaintiffs have no adequate remedy at law to resolve this dispute.
27 Plaintiffs seek a judicial resolution of the controversy and a declaration of the
28 following: that Plaintiffs owe no duty to indemnify Defendant under the Travelers

1 Policies against damages sought from Defendant in the underlying lawsuit.

2 41. By reason of the foregoing, a declaratory judgment is both proper and
3 necessary so that the rights, duties, and obligations between Plaintiffs and Defendant
4 may be determined under the provisions of the Travelers Policies.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for judgment as follows:

7 1. For a declaration of this Court of the following: that Plaintiffs owe no
8 duty to defend Northwest Pipe Company in the underlying lawsuit under the
9 Travelers Policies;

10 2. For a declaration of this Court of the following: that Plaintiffs owe no
11 duty to indemnify Northwest Pipe Company under the Travelers Policies against the
12 damages sought from Northwest Pipe Company in the underlying lawsuit;

13 3. For an award of Plaintiffs' costs in this action; and

14 4. For such other and further relief as the Court may deem just and proper.

15 DATED: February 16, 2023

MORALES, FIERRO & REEVES

17 By /s/ Ramiro Morales

18 RAMIRO MORALES

19 WILLIAM C. REEVES

LAURENCE NEAR

20 Attorneys for Plaintiffs THE PHOENIX

21 INSURANCE COMPANY and

22 TRAVELERS PROPERTY

CASUALTY COMPANY OF

23 AMERICA
24
25
26
27
28